

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Illinois Bell Telephone Company)	
)	CHIEF CLERK'S OFFICE
Application for Review of Alternative)	Docket No. 98-0252
Regulation Plan)	
)	
)	
Petition to Rebalance Illinois Bell)	
Telephone Company's Carrier Access and)	Docket No. 98-0335
Network Access Line Rates)	
Citizens Utility Board and People of the)	
State of Illinois, ex rel. James E. Ryan,)	
Attorney General of the State of Illinois,)	
Complainants)	
)	
vs.)	Docket No. 00-0764
)	
Illinois Bell Telephone Company d/b/a)	
Ameritech Illinois,)	(consolidated)
Respondent)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY TO
VARIOUS RESPONSES TO THE JOINT MOTION TO REOPEN THE RECORD

The Staff of the Illinois Commerce Commission (hereafter "the Staff"), pursuant to Section 200.870 of the Rules of Practice before the Illinois Commerce Commission, and in reply to the Responses of Z-Tel Communications, Inc. (hereafter "Z-Tel"); the Joint CLEC / IXCs¹ (hereafter "Joint CLECs") ; and GlobalCom Inc. / XO Illinois Inc. (hereafter "XO"), to the Joint Motion to Reopen the Record in the above-captioned proceeding, states as follows:

¹ The Joint CLEC/IXCs consist of AT&T Communication of Illinois, Inc., WorldCom, Inc., and McLeodUSA, Inc. Joint CLEC Response at 1.

1. On January 22, 2002, Z-Tel, the Joint CLECs, and XO each filed separate Responses to the Joint Motion. See, respectively, Z-Tel Response; Joint CLEC Response; XO Response.

2. The Joint CLECs' Response asserts, in summary, that the Joint Proposal significantly and substantially alters Condition 26 of the Commission's Merger Order. Joint CLEC Response, ¶¶ 6-7; see also Merger Order at 149, 246. While the Joint CLECs do not attempt to dispute the fact that the Commission amend or alter its prior orders under the authority of Section 10-113 of the Public Utilities Act, they argue that notice has not been given to all parties to the Merger Order, thus violating the due process rights of those parties to the Merger proceeding who are not parties to this proceeding. Joint CLEC Response, ¶ 6. The Joint CLECs further argue that the matters raised in the Joint Motion should properly be considered in a reopening of the merger proceeding, Id., ¶ 7, and therefore urge that the Motion be denied.

3. XO makes essentially the same arguments. XO Response, ¶¶ 1-2. XO further argues that the Merger Order requires that proper TELRIC prices be established prior to the distribution of merger-related savings to any class of customers. Id., ¶3. XO contends that proper TELRIC prices have yet to be established, and therefore any distribution of merger-related savings is improper at this time. Id. XO further contends that the Joint Proposal appears not to comply with the terms of Merger Condition 26, in that it does not result in customers, including CLECs, receiving any share of merger saving accruing after December 2001. Id., ¶ 4. While XO does not request that the Motion to Reopen

be denied, it urges Commission consideration of its Response in determining whether to grant or deny the Joint Motion. Id.

4. Z-Tel raises different concerns altogether. Specifically, Z-Tel argues that adoption of the Joint Proposal would effectively violate Section 7-204(c), pursuant to which the Commission imposed Condition 26, to the extent that the Joint Proposal would “upset [the Condition 26 process] by replacing Condition 26 in its entirety.” Z-Tel Response at 4; *see also*, 220 ILCS 5/7-204(c). In essence, Z-Tel argues that were the Commission to adopt the Joint Proposal, it would have no way of knowing whether the proposed one time credit was adequate. Id.

5. Z-Tel next argues that the Joint Proposal is anti-competitive. *See Z-Tel Response* at 5-9. It contends that the Joint Proposal would discriminate in favor of Ameritech and against CLECs because CLECs, under the Joint Proposal, would receive their portion of the merger savings based on the amount of revenue Ameritech derives from them, which since they pay TELRIC-based UNE rates for service, is far less per access line that they serve than for Ameritech retail customers. Id. at 6-7. This, according to Z-Tel, would render CLECs unable to “flow through” merger savings to their customers in the same amounts per access line as Ameritech could to its retail customers, rendering Ameritech retail service a considerably more attractive option to existing CLEC customers than heretofore. Id. at 7-8. Z-Tel considers this to be a marketing opportunity that Ameritech is highly likely to exploit. Id. Z-Tel offers a number of what it views as improvements to the Joint Proposal. Id. at 9-10.

6. The Joint CLECs have taken a position that is somewhat similar to the Staff's – they argue that all parties to the merger proceeding should receive notice and an opportunity to be heard regarding the Joint Proposal. The Staff concurs with this, and has argued that such notice should be given. See, *generally*, Staff Response. Indeed, the Draft Reopening Order submitted by the Staff with its Response would accomplish precisely that. See Staff Response, Exhibit 2. The Staff does not, however, concur in the Joint CLECs' assertion that the Commission must reopen the merger proceeding to consider the Joint Proposal. First, Section 10-113 clearly does not require that the Commission consider modification or amendment of past orders in precisely the same docket or dockets in which such orders were entered; rather, it requires that interested parties be given notice and an opportunity to be heard, which due process rights can easily be insured through adoption of the Staff's Draft Order. 220 ILCS 5/10-113; see also Staff Response, Exhibit 2. Second, the Commission clearly intended that the merger costs and savings issue be resolved in this proceeding, although admittedly the Commission anticipated at the time that this would be done through adjustments to the price cap formula. See Merger Order at 149-50. Accordingly, the Joint CLECs' arguments should be rejected.

7. XO does not specifically pray for relief other than consideration of its arguments. To the extent that such arguments are similar to those raised by the Joint CLECs, the Staff rests on ¶ 6, above. XO's other arguments need not be considered, inasmuch as they go to the merits of the Joint Proposal. Since the only issue currently before the Commission is whether the record in this

proceeding should be reopened so that the Commission can evaluate the merits of the Joint Proposal, arguments regarding the merits of the Joint Proposal are premature. If XO believes that the Joint Proposal is deficient, it can call the Commission's attention to those alleged deficiencies on reopening.

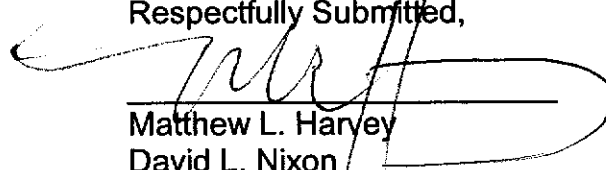
8. The same argument applies with even greater force to Z-Tel's response. All of Z-Tel's arguments go to the merits of the Joint Proposal, which is not yet before the Commission, rather than the merits of the Joint Motion, which is. Again, if Z-Tel believes that the Joint Proposal is deficient, it can call the Commission's attention to those alleged deficiencies on reopening. Its arguments, however, have no bearing whatever on the question of whether the Commission should reopen the record to consider a proposal regarding an issue in the docket it is reopening.

9. Z-Tel's concern for making certain that merger savings are fully accounted for is laudable. However, it is also, apparently, of quite recent vintage; Z-Tel has yet to intervene in ICC Docket No. 01-0128, in which merger savings are being tracked. Z-Tel's position regarding the adequacy of the Joint Proposal should, perhaps, be considered in this light.

10. The Commission should reopen the record. The question of whether the Joint Proposal constitutes a fair, reasonable and adequate resolution of the merger savings issue is an important one that ought not to be disposed of hastily. The Commission should be afforded an opportunity to consider the Joint Proposal based upon a full record.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Matthew L. Harvey', is written over a horizontal line. The signature is stylized with a large, sweeping 'M' and a long, horizontal stroke extending to the right.

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January 25, 2002

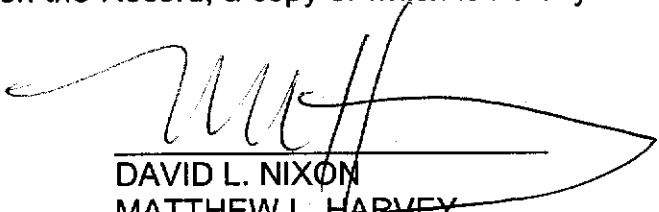
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Petition to rebalance Illinois Bell Telephone)	
Company's Carrier Access and Network)	
Access Line Rates.)	(cons.)
)	
Citizens Utility Board and)	
The People of the State of Illinois)	
-vs-)	
Illinois Bell Telephone Company)	
)	00-0764
Verified Complaint for a Reduction in Illinois)	
Bell Telephone Company's Rates and Other)	
Relief.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that we have on this 25th day of January, 2002, filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois, the Staff of the Illinois Commerce Commission's Reply to Various Responses to the Joint Motion to Reopen the Record, a copy of which is hereby served upon you.

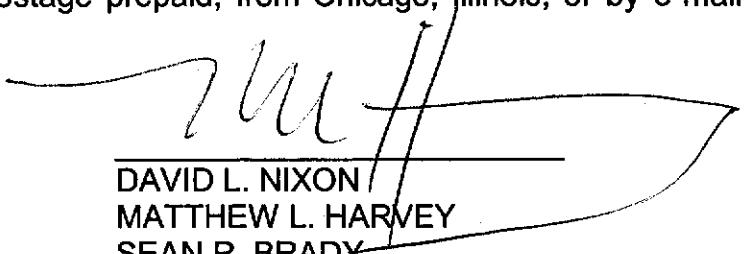


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the above Notice, together with copies of the document referred to therein, have been served upon the parties to whom the Notice is directed by U.S. mail, proper postage prepaid, from Chicago, Illinois, or by e-mail on this 25th day of January, 2002.



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